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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,649	08/29/2003	Lutz Assmann	Mo5605D3/LeA 32,692	9332
34469	7590	03/19/2004	EXAMINER	
BAYER CROPSCIENCE LP Patent Department 100 BAYER ROAD PITTSBURGH, PA 15205-9741			STOCKTON, LAURA	
			ART UNIT	PAPER NUMBER
			1626	

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

## Application No.

10/651,649

## Applicant(s)

ASSMANN ET AL.

## Examiner

Laura L. Stockton, Ph.D.

## Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on August 29, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/530,721.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08).  
Paper No(s)/Mail Date 8/29/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

Claims 11-15 are pending in the application.

### *Priority*

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/530,721, filed on May 3, 2000.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C.

112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Process b) in claim 12 does not produce the compounds of formula (I).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimotori et al. {U.S. Pat. 5,240,951}.

*Determination of the scope and content of the prior art (MPEP §2141.01)*

Applicants claim 3,4-dichloroisothiazole compounds. Shimotori et al. teach 3,4-dichloroisothiazole compounds which are structurally similar to the instant claimed compounds (column 2, lines 8-34; Examples 36 and 41 in columns 13-14; the process found in column 5, lines 35-68 and column 6, lines 1-11; and methods of use in column 6, lines 12-46). See in Shimotori et al. (column 2, lines 8-34), for example, wherein R<sup>1</sup> and R<sup>2</sup> each represent halogen (e.g., chloro), Y is NHR<sup>4</sup> and

R<sup>4</sup> is an alkyl substituted with halogenphenyl groups. Also, see Table below.

APPLICANTS' COMPOUNDS	PRIOR ART'S COMPOUNDS
The compound in instant claim 15 (or compound 25 on page 35)	<i>Shimotori et al.</i> {U.S. Pat. 5,240,951}  Compounds 36 and 41 in columns 13-14; and compound 50 in columns 15-16

*Ascertainment of the difference between the prior art and the claims (MPEP §2141.02)*

The difference between the compounds of the prior art and the compounds instantly claimed is that the instant claimed compounds are generically described in the prior art.

*Finding of prima facie obviousness--rational and motivation (MPEP §2142-2413)*

The motivation to make the claimed compounds derives from the expectation that structurally similar compounds would possess similar activity (e.g. treating pests).

One skilled in the art would thus be motivated to prepare products embraced by the prior art to arrive at the instant claimed products with the expectation of obtaining additional beneficial products which would be useful in treating pests. The instant claimed invention would have been suggested to one skilled in the art and therefore, the instant claimed invention would have been obvious to one skilled in the art.

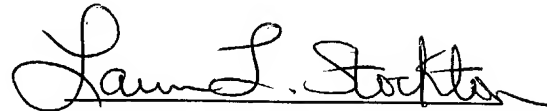
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura L. Stockton whose telephone number is (571) 272-0710. The examiner can normally be reached on Monday-Friday from 6:15 am to 2:45 pm. If the examiner is out of the Office, the examiner's supervisor, Joseph McKane, can be reached on (571) 272-0699.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

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The Official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

A handwritten signature in black ink, reading "Laura L. Stockton". The signature is fluid and cursive, with the first name "Laura" and last name "Stockton" clearly distinguishable.

Laura L. Stockton, Ph.D.

Patent Examiner

Art Unit 1626, Group 1620

Technology Center 1600

March 15, 2004